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WATER RIGHTS
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BEFORE THE STATE ENGINEER OF THE STATE OF UTAH

In the Matter of Applications
For Permanent Change of Water
55-4292 (a20133) filed by Edmund
T. Sperry and 55-4293 (a21034)
filed by Remund Ranch, Inc.

REQUEST FOR RECONSIDERATION

Midway Irrigation Company hereby requests reconsideration of the State Engineer Approval of Change Application a21033 (55-4292) filed by Edmund T. Sperry and Change Application a21034 (55-4293) on the following grounds:

1. The water rights underlying both applications are based on diligence claims that claim water previously conveyed to Midway Irrigation Company and used under Midway Irrigation Company shares. These water rights, as well as the Irrigation Company water rights in general, are set forth and confirmed in the Provo River Decree. By validating the applicants' diligence claims through approval of the change application, the applicants are essentially being allowed new appropriations in a fully appropriated drainage without complying with the provisions of Utah Code Ann. § 73-3-8. Furthermore, because the diversion points and place of use are within the Irrigation Company service area, this new appropriation

of water is made at the expense of the Irrigation Company's prior existing decreed water rights and will take water that historically has been used to satisfy those rights.

2. The historical water right claimed under the diligence claims was seasonally limited to high water, which did not last beyond June 15 in most years. As a result, applicants and their predecessors in interest were not authorized to divert or use any water outside of this short period of time. Under Rocky Ford Irrigation Company v. Kents Lake Reservoir Company, 104 Utah 202, 135 P.2d 108 (1943), a change application based on a water right that is seasonally limited because of the availability of water cannot allow the applicant to divert water at times when such water was unavailable and could not have been taken under limitations of the underlying water right. However, that is precisely what has been allowed here. Applicants have been given approval to divert water at any time throughout the year. Any diversions during the non-high water season will take water that is allocated to other water rights and that was never available to applicants under the underlying rights. Accordingly, approval of the applications impermissibly enlarges the underlying rights and at the same time interferes with the Irrigation Company's rights.

3. In approving the change applications and quantifying the diversions, the State Engineer has assumed septic sewer systems with a depletion of only 20%. No evidence has been presented or

offered by applicants regarding the type or efficiency of the proposed sewer. The Wasatch County sewer system, for example, is an open lagoon sewage system, which is 100% consumptive. Without having defined the type of sewer system, applicants are free to use any type of system, including the county system. Accordingly, the diversion limitations have been made without basis.

4. Under the approvals, applicants have the right to divert and use water at points immediately updrainage from Irrigation Company springs that supply both culinary and irrigation water to shareholders. If applicants use septic sewer systems for 268 residences, there is a great potential for contamination of the Irrigation Company's springs and its right to receive water undiminished in quantity and quality.

5. Applicants' proposed diversion points will interfere with the Irrigation Company's sources by intercepting and negatively affecting underground water flows that contribute to the Irrigation Company's spring sources located immediately downdrainage. This is particularly true because of the expanded period of authorized diversion that allows applicant to divert water during low flow periods based upon high water rights.

WHEREFORE, pursuant to Rule R655-6-7 of the Utah Administrative Code and Utah Code §§ 73-3-4 and 63-46b-13, Midway Irrigation Company requests reconsideration of the State Engineer

approval of the above referenced applications and prays that the applications be denied.

DATED this 19th day of March, 1998.

MIDWAY IRRIGATION COMPANY

A handwritten signature in cursive script, reading "Steve Farrell", is written over a horizontal line.

Steve Farrell
President
325 West 500 South
Midway, Utah 84049